

JAMES CHIOLINO

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN BEMKE, SCOTT COLLETT,
JOHN FERIOZZI, JUDY FINITZ,
SARAH JAMIESON, EVAN JOHNSON,
TRACY LONG and CLIFFORD NEUMANN,

Plaintiffs,

-vs-

Case No. 21-cv-560

AMY PECHACEK, in her official
capacity as Secretary-designee
of the State of Wisconsin
Department of Workforce Development,

Defendant.

VIDEOCONFERENCE DEPOSITION OF JAMES CHIOLINO

Wednesday, July 20, 2022

8:58 a.m.

Reported by: SANDRA L. McDONALD

I N D E X

3 Examination By: Page:

4 Attorney Kinne 4

5 Attorney Fitzpatrick --

(There were no exhibits marked for identification)

(Original transcript filed with Attorney Kinne)

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VIDEOCONFERENCE DEPOSITION of JAMES CHIOLINO,
a witness of lawful age, taken on behalf of the
plaintiffs in the above-entitled cause, under the
Federal Rules of Civil Procedure, pursuant to
notice, before SANDRA L. McDONALD, a Notary Public
in and for the State of Wisconsin, from various
remote locations, on the 20th day of July, 2022,
commencing at 8:58 a.m.

A P P E A R A N C E S

PAUL A. KINNE,
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STEVEN C. KILPATRICK,
Assistant Attorney General
WISCONSIN DEPARTMENT OF JUSTICE
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appearing by videoconference on
behalf of the defendants.

Also Present: JENNIFER WAKERHAUSER,
DWD Chief Legal Counsel

JAMES CHIOLINO,

having been first duly sworn on oath,
was examined and testified as follows:

EXAMINATION

6 BY MR. KINNE:

7 Q Could you please state your name and spell it for the
8 record?

9 A James Chiolino, C-h-i-o-l-i-n-o.

10 Q Mr. Chiolino, I'm not going to ask you for your home
11 address, but if you are to change either home or work
12 address, could you please let Attorney Kilpatrick
13 know so we know where to find you?

14 A Certainly.

15 Q Have you ever been deposed before?

16 A Yes.

17 Q How recently?

18 A The last time was 18 months ago, roughly.

19 Q All right. I'm still going to go over some
20 mechanical rules, just so they're fresh in your mind,
21 okay?

22 A Sure.

23 Q You're under oath, so you have to tell the truth. Do
24 you understand that?

25 A Yes.

2

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1 Q I'll be asking you questions. You'll be giving me
2 answers. Please try to avoid talking over the ends
3 of my questions, and I will try to avoid talking over
4 the ends of your answers for the sake of the court
5 reporter, okay?
6 A Yes.
7 Q You're doing a great job of using words for answers,
8 because things like uh-huh, um-hum, nodding or
9 shaking your head aren't acceptable because the court
10 reporter can't record those, okay?
11 A Okay.
12 Q And last but not least, if I ask you a question that
13 you don't understand, please let me know, and I will
14 try to rephrase it in a way that you do understand
15 it, okay?
16 A I will.
17 Q Did you review any documents to prepare for your
18 deposition today?
19 A Yes.
20 Q What did you review?
21 A I reviewed Secretary Designee Amy Pechacek's
22 deposition transcript.
23 Q Anything else?
24 A No.
25 Q Did you take any notes on it?

5

1 A No.
2 Q Was there anything in her deposition that stood out
3 in your mind where you thought, "I really disagree
4 with that"?
5 A No.
6 Q Where do you currently work?
7 A The Department of Workforce Development, Unemployment
8 Insurance Division.
9 Q What's your title there?
10 A Division administrator.
11 Q How long have you been the division -- well, what are
12 the dates that you've held that title?
13 A I started in this position on December 21st of 2021.
14 Q Is that an appointment position or were you hired?
15 A I was appointed.
16 Q And who appointed you?
17 A My understanding is that it is an appointment by the
18 secretary designee but with the governor's approval.
19 Q Okay. Where did you work before December 21, 2021?
20 A I worked for the Department of Workforce Development,
21 Equal Rights Division.
22 Q What were the dates you worked there?
23 A I worked there on and off for a few stints, so I
24 worked there for this last period from November 10th
25 of 2010 until December 20th of 2021.

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1 Q And what was your title during that last stint? And
2 if you held more than one, tell me what they were.
3 A Sure. My last title was director of the Bureau of
4 Hearings and Mediation. That was since roughly 2018.
5 And prior to that, from 2010 until 2018, I was the
6 director of the Bureau of Labor Standards. There was
7 a reorganization, so things sort of changed as far as
8 titles.
9 Q Yeah. And who appointed you to the -- strike that.
10 Was the director of the Bureau of Labor Standards,
11 was that -- were you hired into that position or
12 appointed?
13 A I was hired.
14 Q Okay. Let's just go back now to talk about your
15 position as the division administrator at the
16 Department of Workforce Development, Unemployment
17 Insurance Division, okay?
18 A Okay.
19 Q So I don't have to say that every time, if I say the
20 UI Division, will you know what I'm talking about?
21 A Certainly.
22 Q Okay. So what are your duties as the director of the
23 UI Division?
24 A I'm responsible for the day-to-day running of the
25 Division.

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1 Q I assume that part of your job is implementing and
2 enforcing policy; is that right?
3 A Yes.
4 Q Do you have any authority from your perspective to
5 create or set policy?
6 A It depends on what that policy is, but within
7 statutory and administrative regulation guidelines I
8 have some authority, in consultation with the
9 Secretary's Office.
10 Q Okay. Do you have any authority to set policy with
11 respect to who receives unemployment compensation
12 insurance benefits?
13 A That's all laid out by statute and administrative
14 rule, so I have very little authority. I can't think
15 of what authority I would have in that realm.
16 Q Okay. Just for background, can you describe how the
17 Unemployment Insurance Division is organized?
18 A Sure. There are -- in the Division there are five
19 bureaus, maybe four. I'm going to go through them
20 just so that I'm counting correctly. We have the
21 Bureau of Legal Affairs, which has our administrative
22 law judges and other legal employees. We have the
23 Bureau of Management and Information Systems, which
24 is -- they help with our technology and systems. We
25 have the Bureau -- I'm sorry, it's called the Benefit

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1 Operations Bureau, which decides eligibility
2 questions very broadly. That's the largest bureau in
3 the Division. And then we have the Bureau of Tax and
4 Accounting, so four bureaus.
5 Q What does the Tax and Accounting Bureau do?
6 A They collect taxes and run -- not run, administer the
7 Trust Fund, the Unemployment Insurance Trust Fund.
8 Q Sometimes unemployment -- strike that. Sometimes
9 claimants have to repay benefits that they've
10 received, right?
11 A Yes, if they -- if it's determined that they received
12 benefits incorrectly, there is collection activity
13 that takes place to recoup those overpayments, and
14 that is the Bureau of Tax and Accounting that has
15 those collectors.
16 Q Okay. And sometimes claimants can be charged a
17 penalty as well; is that right?
18 A I believe so.
19 Q And who determines the size of the penalty, if you
20 know?
21 A I don't know.
22 Q Who collects the penalty?
23 A The Bureau of Tax and Accounting.
24 Q Okay. And do you know if they do that directly, or
25 do they hire out the actual collection work?

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1 A I believe they do it correctly -- directly. They
2 sometimes have other tools that they may use to
3 collect, but it's all handled directly in the Bureau
4 of Tax and Accounting.
5 A Okay.
6 Q And what does the Bureau of Benefits do?
7 A The Benefit Operations Bureau decides eligibility at
8 the initial level.
9 Q And who's the director of that bureau right now?
10 A The director of the Benefit Operations Bureau is
11 Lynn Hendrickson.
12 Q Do you know how long she's held that job?
13 A I am not clear on that.
14 Q Okay.
15 A A year or two would be my -- well, I don't want to
16 guess.
17 Q Was she in that position before or after you took
18 over as the division administrator?
19 A She's been in that position since before I started as
20 division administrator. Again, I've only been there
21 for seven months, and at least a year she's been in
22 that position, probably longer than that.
23 Q Okay. And who's the director of the Bureau of Tax
24 and Accounting?
25 A Shashank Partha.

10

1 Q Could you spell that, please?
2 A Sure. His first name is Shashank, S-h-a-s-h-a-n-k,
3 last name Partha, P-a-r-t-h-a.
4 Q And is that a man or a woman?
5 A It is a man.
6 Q How long has he held that position, if you know?
7 A I should be able to remember this, but I'm -- it's
8 been since I've been division administrator, I
9 believe since February of 2022.
10 Q And who preceded him, if you know?
11 A Yes, Thomas McHugh. Last name is M-c, capital
12 H-u-g-h.
13 Q And do you know where Mr. McHugh ended up?
14 A He retired.
15 Q Do you know how long he held the position?
16 A I don't.
17 Q You mentioned before a trust fund, right?
18 A I did.
19 Q Could you explain in layperson's terms what the Trust
20 Fund is and how it's funded?
21 A Unemployment insurance benefits are funded by a
22 payroll tax to employers, and that's what the Trust
23 Fund is made up of in my understanding, the funds
24 taken in through employer accounts based on payroll.
25 There are State taxes and federal taxes. I'm not

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1 exactly sure how that mix goes, but mostly it's State
2 tax-funded.
3 Q And how is that tax collected?
4 A Through the Bureau of Tax and Accounting on a
5 quarterly basis.
6 Q And how is the tax calculated, if you know?
7 A I don't.
8 Q Okay.
9 A I do know that there are experience rates based on
10 employers, the usage of each account, but that's the
11 extent of my knowledge in that area.
12 Q Okay. Is that set forth in regulations or rules
13 somewhere?
14 A I believe so.
15 Q Okay. So what happens to the Trust Fund in a year
16 when there are a larger than normal number of claims?
17 A More claims are paid out of those accounts and the
18 Trust Fund would decrease usually, to my
19 understanding.
20 Q Do the taxes go up?
21 A Usually taxes go up when the experience of an account
22 goes up. If you're talking about during the
23 pandemic, there were special regulations put into
24 place that froze the amount of taxes actually in a
25 certain schedule, so there are -- so I guess I know a

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1 little more. There are at least four schedules for
 2 employer accounts, and based on the unemployment
 3 level during the past fiscal year, the schedule is
 4 determined.
 5 For through 2023, that schedule is set at the
 6 lowest, the lowest schedule, so that means taxes
 7 didn't go up during the pandemic, nor will they go up
 8 through next year. But the unemployment level is
 9 fairly low right now, historically low, so we're in
 10 the schedule probably through 2023 that we would have
 11 been in anyway despite this legislation.
 12 Q Now I'd like to focus on a period before the
 13 pandemic, okay?
 14 A Okay.
 15 Q So in a year when there was an unusually large number
 16 of claims, the Trust Fund balance would go down and
 17 the taxes would go up pre-pandemic, right?
 18 A I believe so.
 19 Q Okay.
 20 A You know, it does predate me as a division
 21 administrator, but I believe that's true.
 22 Q Okay. And is the opposite true? When there are a
 23 smaller numbers of claims, do taxes go down?
 24 A It depends on the experience in the year prior to the
 25 year in which those schedules are set, so I -- you

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1 know, generally, I'm not sure exactly how that works.
 2 Q Okay, okay. And does the Unemployment Insurance
 3 Division, does it receive federal funds?
 4 A Some federal funds, yes.
 5 Q What do those federal funds go to?
 6 A We have funding for administration of the Division,
 7 of the program.
 8 Q Okay. So tell me, walk me through how the typical
 9 claims process would work. I mean, obviously
 10 somebody has to be employed, right?
 11 A Yes.
 12 Q And that person has to lose their job, right?
 13 A Yes, typically.
 14 Q Okay. And then that person applies for unemployment
 15 compensation benefits, right?
 16 A Yes.
 17 Q And there is a determination about whether that
 18 person is entitled to benefits, right?
 19 A One or more determinations, yes.
 20 Q Okay. Because in order to be entitled to benefits,
 21 the applicant has to meet certain criteria, right?
 22 A Correct.
 23 Q And the amount of benefits that that person -- well,
 24 strike that. Assuming a person met the criteria,
 25 that person would be entitled to an amount of

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1 benefits relative to what factors?
 2 A Assuming someone is found to be eligible, their
 3 separation makes them eligible for benefits. The
 4 amount of benefits that they're eligible for is based
 5 upon their earnings over generally the first four of
 6 the last five completed calendar quarters.
 7 Q Okay.
 8 A And then there's a formula to figure that out, which
 9 I don't have memorized.
 10 Q All right. And that's an entitlement; is that right?
 11 MR. KILPATRICK: Objection, vague.
 12 A I'm not exactly clear on what you mean by an
 13 entitlement.
 14 Q Okay. Well, once that determination has been made,
 15 unless some other factor intervenes, that person is
 16 entitled to that money, right?
 17 A If they are found eligible for benefits and continue
 18 to be eligible, meet eligibility criteria, yes, they
 19 would be entitled to those benefits.
 20 Q The Unemployment Insurance Division doesn't have the
 21 discretion to just decide not to pay the benefits,
 22 correct?
 23 A If there are no changes to the eligibility of that
 24 individual, no, there's -- on a whim, the Division
 25 can't decide somebody is not eligible.

15

1 Q Okay. And what we've been talking about, all of that
 2 is set by statute -- strike that. The amount of
 3 benefits to which a claimant is entitled is set by
 4 statute or rule; is that right?
 5 A Correct.
 6 Q The entire administrative budget for the Unemployment
 7 Insurance Office is federally funded; is that
 8 correct?
 9 A I'm not sure if the entirety of the administrative is
 10 funded federally.
 11 Q Okay.
 12 A I don't know.
 13 Q Are there ever circumstances when offsets are used
 14 with respect to the receipt of the unemployment
 15 compensation benefits?
 16 A I don't -- I don't know.
 17 Q Do you know who would know the answer to that?
 18 A It depends on what you mean by offsets.
 19 Q All right. Let's say that -- that's fair. Are there
 20 situations where an unemployment compensation
 21 applicant, a claimant, is receiving some kind of
 22 government benefit other than unemployment
 23 compensation?
 24 A Are there -- that's the end of the question?
 25 Q Yes.

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<p>1 A I believe so.</p> <p>2 Q Okay.</p> <p>3 A I would guess.</p> <p>4 Q All right. And do you know if there are any</p> <p>5 situations where the non-UI benefit is offset against</p> <p>6 the UI benefit?</p> <p>7 A I don't know.</p> <p>8 Q Okay. If offsets were to be imposed, those would be</p> <p>9 reflected somewhere in rules, regulations or</p> <p>10 statutes, right?</p> <p>11 A If I understand you correctly, if the Unemployment</p> <p>12 Division were to impose offsets against benefits,</p> <p>13 yes, those would be in rules or statutes.</p> <p>14 Q Are there any situations where -- strike that. Are</p> <p>15 there any situations where the claimant's receipt of</p> <p>16 another government benefit automatically disqualifies</p> <p>17 that person from getting UI benefits?</p> <p>18 A As I understand it, yes.</p> <p>19 Q Give me the list that you're aware of of other</p> <p>20 benefits that causes a UI claimant to be disqualified</p> <p>21 from receiving UI benefits.</p> <p>22 A The only benefit that I'm aware of where that happens</p> <p>23 is the Social Security Disability Insurance, SSDI.</p> <p>24 I'm not aware of any other benefits. There could be,</p> <p>25 but I'm not aware of them.</p> <p style="text-align: right;">17</p>	<p>1 we're not in compliance with, we'll want to know that</p> <p>2 or will ask the bureau director in our Bureau of</p> <p>3 Legal Affairs for a legal opinion.</p> <p>4 Q Does Ms. Knutson ever conduct any audits or anything</p> <p>5 like that to determine compliance?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Are you familiar with what an applicant for Social</p> <p>8 Security Disability Insurance benefits must prove to</p> <p>9 establish eligibility for those benefits?</p> <p>10 A My understanding goes back probably more -- well, it</p> <p>11 goes back prior to 2010, from when I was practicing</p> <p>12 law and I handled a few pro bono SSDI cases, but I</p> <p>13 don't remember, frankly. There's a long list of</p> <p>14 eligibility criteria or several different categories,</p> <p>15 if I remember correctly.</p> <p>16 Q Okay. Are SSDI beneficiaries allowed to work under</p> <p>17 certain circumstances and still receive benefits?</p> <p>18 A It's my understanding that they are.</p> <p>19 Q And do you know the difference between how disability</p> <p>20 is defined under the ADA and how it's defined under</p> <p>21 the Social Security Act?</p> <p>22 A I don't. I don't remember that, if I ever knew it.</p> <p>23 Q While an unemployed person is receiving SSDI</p> <p>24 benefits, are they automatically precluded from</p> <p>25 receiving unemployment compensation benefits?</p> <p style="text-align: right;">19</p>
<p>1 Q Okay. And if there were other examples, that would</p> <p>2 also be in statutes; is that right?</p> <p>3 A Yes.</p> <p>4 Q Is there somebody in the UI Division that's</p> <p>5 responsible for ensuring that the Department complies</p> <p>6 with regulations of State and federal law?</p> <p>7 A I think we are all responsible for that to some</p> <p>8 extent.</p> <p>9 Q Okay.</p> <p>10 A I mean, I bear some responsibility for that as well.</p> <p>11 Q Is there any -- is there a position or title that's</p> <p>12 specifically devoted to compliance?</p> <p>13 A Our Bureau of Legal Affairs bureau director probably</p> <p>14 is the person that I rely on for advice about those</p> <p>15 sorts of issues.</p> <p>16 Q What's that person's name?</p> <p>17 A Janell Knutson. First name is J-a-n-e-l-l. Last</p> <p>18 name is K-n-u-t-s-o-n.</p> <p>19 Q And is Knutson's compliance oversight, from your</p> <p>20 perspective and experience, reactive, proactive or a</p> <p>21 mix?</p> <p>22 A Again, we're all responsible for compliance in some</p> <p>23 way, shape or form. And, yeah, I would guess it's a</p> <p>24 mix, as is my dealing with any compliance issues, you</p> <p>25 know. If we find out about something we believe</p> <p style="text-align: right;">18</p>	<p>1 A Yes.</p> <p>2 Q And that's pursuant to statute; is that right?</p> <p>3 A Yes.</p> <p>4 Q What prevents the UI Division from paying</p> <p>5 unemployment compensation benefits to SSDI</p> <p>6 beneficiaries?</p> <p>7 A I may not understand your question. The statute</p> <p>8 prevents it.</p> <p>9 Q What prevents the UI Division from offsetting the</p> <p>10 SSDI benefits against unemployment compensation</p> <p>11 benefits?</p> <p>12 A The statute.</p> <p>13 Q From your perspective in your position, you lack the</p> <p>14 discretion to offset benefits; is that right?</p> <p>15 A Pursuant to the statute, yes.</p> <p>16 Q Do you know one way or another whether some SSDI</p> <p>17 beneficiaries receive less in an SSDI benefit than</p> <p>18 they would in a month's worth of UI benefits?</p> <p>19 A I do not know.</p> <p>20 Q Do you know how the SSDI exclusion impacts disabled</p> <p>21 people compared to non-disabled people?</p> <p>22 MR. KILPATRICK: I'm going to object</p> <p>23 to the extent it's a legal question, but you may</p> <p>24 answer.</p> <p>25 A Sure. Non-disabled people would not be eligible for</p> <p style="text-align: right;">20</p>

1 SSDI, so they would not be excluded. Some disabled
2 people might be eligible for unemployment if they're
3 not eligible for SSDI, so beyond that, I don't know.
4 I don't remember exactly how SSDI is determined.
5 Q Okay. Do you know if any other states render an SSDI
6 beneficiary ineligible for unemployment compensation
7 benefits while the employee is receiving SSDI
8 benefits?
9 A I believe one other state, but I don't know that for
10 a fact.
11 Q Okay. Do you know if other states offset SSDI
12 benefits against unemployment compensation?
13 A I don't know.
14 Q Have you ever heard of the when due clause?
15 A No.
16 Q Does the secretary of labor play any role in
17 evaluating the Unemployment Insurance Division?
18 A I believe so. I don't -- I don't know exactly what
19 role the secretary of labor would have.
20 Q Okay.
21 A Certainly the Department of Labor has some role, and
22 I assume the secretary, yep.
23 Q All right. I didn't mean to imply that the secretary
24 of labor personally had responsibility, but his
25 department has some responsibility of overseeing or

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1 evaluating the Unemployment Insurance Division; is
2 that right?
3 A Yes.
4 Q Could you describe that for me?
5 A From what I'm aware, there are several areas in which
6 the U.S. Department of Labor audits various programs,
7 and we've undergone several such audits over the last
8 at least six months since I've been around, so there
9 are audits of various programs. We also report the
10 statistics.
11 We are responsible for various things like
12 prompt payment of benefits. They set standards for
13 the number of claims -- the percentage of claims that
14 we should be paying within a certain amount of time,
15 15 days. They set standards for how our hearings go,
16 with the number of hearings that are resolved within
17 various timelines. So they do set standards, and we
18 try to comply with those standards.
19 There's also something known as substantial
20 compliance where if we were out of compliance with
21 federal requirements, then there might be loss of
22 some funding to the Division.
23 Q Okay. And do you know if the secretary of labor --
24 well, that the Department of Labor has a
25 responsibility to ensure that the UI Division -- that

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1 the UI Division's method of paying unemployment
2 compensation benefits is reasonably calculated to
3 ensure full payment of those benefits when due?
4 A I believe they have oversight of that issue, yes.
5 Q Have you ever communicated with anybody from the
6 secretary of labor about that?
7 A No.
8 Q Do you know if the Department of Labor has ever made
9 a finding that the SSDI exclusion in Wisconsin is
10 reasonably calculated to ensure full payment of
11 unemployment compensation when due?
12 A I do not know.
13 Q Are you familiar with benefits paid by the Bureau of
14 Indian Affairs assistance in Social Services?
15 A No.
16 Q Do you know if any benefits paid by that federal
17 bureau are offset against unemployment compensation
18 benefits?
19 A I don't know.
20 Q Are you familiar with the Temporary Assistance for
21 Needy Families, W-2?
22 A Yes.
23 Q Do you know one way or another whether those benefits
24 are offset against the receipt of unemployment
25 compensation?

23

1 A I don't think so.
2 Q If they were, it would be in statute or rules, right?
3 A Yes.
4 Q The Supplemental Nutrition Assistance Program, SNAP
5 benefits or Food Share, are you familiar with that
6 program?
7 A Yes.
8 Q Do you know one way or another whether those benefits
9 are offset against the receipt of unemployment
10 compensation?
11 A They are not.
12 Q Have you ever heard of the term double dipping?
13 A In many contexts, yeah, yes.
14 Q Okay. How about with respect to the receipt of SSDI
15 benefits simultaneous with receipt of UI benefits?
16 A Only insofar as I read it in a transcript of the
17 deposition with the secretary designee.
18 Q Okay. Do you have an opinion one way or another
19 whether SSDI beneficiaries are double dipping if they
20 receive unemployment compensation benefits?
21 A I have a personal opinion.
22 Q What's your personal opinion?
23 A My personal opinion is that it isn't double dipping.
24 Q Are you familiar with the term PUA?
25 A Yes.

24

1 Q And what does PUA mean?
2 A Pandemic Unemployment Assistance.
3 Q Do you know one way or another whether SSDI benefits
4 are offset against PUA benefits?
5 A I don't believe they are offset.
6 Q Okay. They're cumulative?
7 A My understanding is that someone on PUA is eligible
8 for those PUA benefits regardless of whether they
9 receive SSDI. I don't know about an offset.
10 Q Okay. What do you know about how collection --
11 strike that. What do you know about how collection
12 efforts at the Unemployment Compensation Division are
13 implemented?
14 A I don't know anything about that.
15 Q Are future benefits seized?
16 A Future benefits can be withheld to offset an
17 overpayment.
18 Q Okay. Does the Department ever put garnish -- does
19 the Department ever garnishee wages, anything like
20 that?
21 A I believe so.
22 Q Do they charge interest?
23 A I don't think so, but I don't know that.
24 Q Are they compelled to pay the cost of collection?
25 A I don't know.

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1 Q If the UI Division concludes that an SSDI beneficiary
2 engaged in concealment and fraud by not disclosing
3 the receipt of SSDI benefits, do you know what that
4 person is then compelled to pay?
5 A I do not know about the statutory regulations about
6 fraud. Sorry.
7 Q Do you know what a UIPL letter is?
8 A Yes.
9 Q Have you ever seen any UIPL letters?
10 A Yes.
11 Q And have you ever seen any UIPL letters pertaining to
12 SSDI beneficiaries receiving unemployment
13 compensation benefits?
14 A No, not that I can recall.
15 Q Okay. What is a UIPL letter?
16 A Unemployment Insurance, I believe it stands for,
17 Program Letter, and it's an interpretation and
18 guidance in most cases. Sometimes they put them out
19 about grant opportunities and things like that, so
20 they can be many different things, but often it's
21 guidance.
22 Q And who do they -- what office do these UIPL letters
23 come from?
24 A Well, the Department of Labor. I'm not sure if
25 there's a particular office in the Department of

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1 Labor that issues those, but the Department of Labor.
2 Q When you say guidance, what do you mean by guidance?
3 A Explanation about federal interpretation of various
4 issues.
5 Q And from your perspective as the director, are you
6 obligated to follow that guidance?
7 A Obligated insofar as State statutes allow.
8 Q Okay. Do you have any idea the amount of money in
9 benefits that is impacted by the SSDI exclusion in
10 annual terms?
11 A You cut out for me there, sorry, in the middle of the
12 question.
13 Q Sure. Do you have any idea of what amount of
14 benefits are impacted by the SSDI exclusion?
15 A No.
16 Q Would there be a way to calculate that?
17 A I really don't know.
18 Q Have you ever seen a UIPL concerning disability
19 access to UI?
20 A No.
21 Q Do you agree that the SSDI exclusion
22 disproportionately impacts disabled people?
23 MR. KILPATRICK: Objection to the
24 extent it calls for a legal conclusion.
25 A I believe -- well, it will impact people who are

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1 disabled under the definitions of the Social Security
2 Act, so it would certainly impact more disabled
3 people than it would non-disabled people.
4 Q In fact, does it impact non-disabled people at all?
5 A No.
6 Q What's your understanding behind the basis for the
7 rule, the exclusion?
8 A I haven't really looked into that at all. I -- you
9 know, as you said before, something about double
10 dipping, that there was some understanding by the
11 drafters of the statute that they didn't want
12 individuals to be collecting two benefits.
13 Q Is it your department's position that double dipping
14 is inherently fraudulent?
15 A No.
16 Q Have you ever seen an October 1, 2015 UIPL letter or
17 memo from Portia Wu and Naomi Barry-Perez?
18 A No. I mean, as I said before, I started working in
19 this division in December of 2021, and I haven't gone
20 over all the UIPLs, you know, so no, I've never heard
21 of such a UIPL.
22 Q Since you've been in that position, has anyone come
23 to you to talk about changing the exclusion
24 statutorily?
25 A Not that I can recall.

28

1 Q Has anyone come to you since you've been in your
2 position to talk about changing how the exclusion
3 works via administrative rule?
4 A No.
5 Q Bear with me a minute. Do you know what a reverse
6 offset is?
7 A No.
8 Q Do you know how or whether worker's compensation
9 benefits are offset against UI benefits?
10 A I do not know.
11 Q Does the SSDI eligibility ban apply regardless of a
12 disabled person's ability to work?
13 A Yes.
14 Q Are otherwise qualified claimants who are able to
15 work like any other qualified claimant still denied
16 unemployment benefits solely due to their SSDI
17 status?
18 A Yes.
19 MR. KINNE: Steve, can we take, say, a
20 10-minute break? I'm going to confer with my
21 co-counsel here. I probably will have a few
22 additional questions.
23 MR. KILPATRICK: Sure, that's fine.
24 MR. KINNE: Okay, great. We'll see
25 everybody back -- so it's 12 minutes to 10.

29

1 Let's see everybody back at 10 a.m. How does
2 that sound?
3 MR. KILPATRICK: Sounds good.
4 THE WITNESS: Fine.
5 (A recess is taken)
6 (9:49 to 10:01 a.m.)
7 MR. KINNE: All right. Back on the
8 record.
9 EXAMINATION (RESUMED)
10 BY MR. KINNE:
11 Q I'd like you to -- I'd like to run a scenario by you
12 and get your reaction, okay?
13 A Okay.
14 Q The first part of the scenario is that you have a UC
15 claimant that has a number of physical restrictions
16 due to a recent surgery, including a restriction to
17 work no more than 20 hours per week for two months,
18 okay?
19 MR. KILPATRICK: Paul, I'm going to
20 object to the extent that you're talking about
21 UC. I'm assuming you meant UI?
22 Q UI, yeah. Sorry about that. Are you good on -- with
23 that clarification, are you good with the first part
24 of my scenario?
25 A Yes.

30

1 Q With the restrictions, the claimant cannot perform
2 the duties of his or her usual occupation but is able
3 to perform a number of jobs for which the applicant
4 or the claimant has prior training and experience,
5 okay? That's the second part of my scenario, okay?
6 A Okay.
7 Q The claimant is willing to do those jobs and is
8 willing to work 20 hours per week, okay?
9 A Okay.
10 Q The claimant has no other restrictions to
11 availability, all right?
12 A Okay.
13 Q Would benefits be allowed solely because of the
14 inability to work full-time?
15 MR. KILPATRICK: I'll just object
16 generally as speculation. But, Jim, you can
17 answer.
18 Q You're on Mute, Mr. Chiolino.
19 A My computer went a little wacky there for a minute,
20 and I missed the end of the question, and so if you
21 could just repeat it.
22 Q Sure.
23 A I'm in the office and having difficulty today. So
24 it's --
25 Q That's okay.

31

1 A Yeah.
2 Q Another part of my scenario is the claimant is
3 willing to do work for which the claimant has prior
4 training and experience up to 20 hours per week,
5 okay?
6 A Yes.
7 Q And the claimant has no other restrictions to
8 availability, okay?
9 A Yes.
10 Q Would benefits be denied solely because of the
11 inability to work full-time?
12 A I don't believe so, but I don't know the answer to
13 that.
14 Q Okay. Did you talk to anybody to prepare for your
15 deposition today besides lawyers?
16 A No.
17 MR. KINNE: I don't have any further
18 questions for you.
19 THE WITNESS: Okay.
20 MR. KILPATRICK: I don't have any
21 follow-up questions either.
22 MR. KINNE: Okay. Well, thank you,
23 everybody. Take care.
24 (Adjourned at 10:05 a.m.)
25

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<p>1 STATE OF WISCONSIN) 2 COUNTY OF DANE) 3 I, SANDRA L. McDONALD, Shorthand Reporter 4 and Notary Public in and for the State of Wisconsin, 5 do hereby certify that the foregoing is a true 6 record of the videoconference deposition of 7 JAMES CHIOLINO, who was first duly sworn by me; 8 having been taken on the 20th day of July, 2022, from 9 various remote locations, in my presence, and reduced 10 to writing in accordance with my stenographic notes 11 made at said time and place. 12 I further certify that I am not a relative 13 or employee or attorney or counsel for any of the 14 parties, or a relative or employee of such attorney 15 or counsel, or financially interested in said action. 16 In witness whereof, I have hereunto set my 17 hand and affixed my seal of office this 28th day of 18 July, 2022. 19 20 Notary Public, State of Wisconsin 21 My Commission Expires 10/18/22 22 23 24 25</p>	<p>answer 16:17, 20:24, 31:17, 32:12. answers 5:2, 5:4, 5:7. anybody 23:5, 32:14. anyway 13:11. appearing 2:17, 2:25, 2:34. applicant 14:21, 16:21, 19:7, 31:3. applies 14:14. apply 29:11. appointed 6:15, 6:16, 7:9, 7:12. appointment 6:14, 6:17. approval 6:18. area 12:11. areas 22:5. around 22:8. Assistance 23:14, 23:20, 24:4, 25:2. Assistant 2:29. assume 8:1, 21:22. Assuming 14:24, 15:2, 30:21. Attorney 2:29, 3:6, 3:7, 3:15, 4:16, 34:14, 34:15. audits 19:4, 22:6, 22:7, 22:9. authority 8:4, 8:8, 8:10, 8:14, 8:15. automatically 17:16, 19:24. availability 31:11, 32:8. Avenue 2:22. avoid 5:2, 5:3. aware 17:19, 17:22, 17:24, 17:25, 19:6, 22:5. . . < B >. Back 7:14, 19:10, 19:11, 29:25, 30:1, 30:7. background 8:16. balance 13:16. ban 29:11. Barry-perez 28:17. based 11:24, 12:9, 13:2, 15:4. basis 12:5, 28:6. Bear 18:10, 29:5. behalf 2:2, 2:18, 2:26, 2:35.</p>	<p>behind 28:6. believe 9:18, 10:1, 11:9, 12:14, 13:18, 13:21, 17:1, 18:25, 21:9, 21:18, 23:4, 25:5, 25:21, 26:16, 27:25, 32:12. BEMKE 1:12. beneficiaries 19:16, 20:6, 20:17, 24:19, 26:12. beneficiary 21:6, 26:1. Benefit 8:25, 10:7, 10:10, 16:22, 17:5, 17:6, 17:16, 17:22, 20:17. Benefits 8:12, 9:9, 9:12, 10:6, 11:21, 14:15, 14:18, 14:20, 14:23, 15:1, 15:3, 15:4, 15:17, 15:19, 15:21, 16:3, 16:15, 17:12, 17:17, 17:20, 17:21, 17:24, 19:8, 19:9, 19:17, 19:24, 19:25, 20:5, 20:10, 20:11, 20:14, 20:18, 21:7, 21:8, 21:12, 22:12, 23:2, 23:3, 23:13, 23:16, 23:18, 23:23, 24:5, 24:8, 24:15, 24:20, 25:3, 25:4, 25:8, 25:15, 25:16, 26:3, 26:13, 27:9, 27:14, 28:12, 29:9, 29:16, 31:13, 32:10. besides 32:15. beyond 21:3. bono 19:12. break 29:20. BRIAN 1:12. broadly 9:2. budget 16:6. Bureau 7:3, 7:6, 7:10, 8:21, 8:23, 8:25, 9:1, 9:2, 9:3, 9:5, 9:14, 9:23, 10:3, 10:6, 10:7, 10:9, 10:10, 10:23, 12:4, 18:13, 19:2, 23:13, 23:17. bureaus 8:19, 9:4. . . < C >. C-h-i-o-l-i-n-o 4:13. C. 2:28. calculate 27:16. calculated 12:6, 23:2,</p>
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